



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,623	07/11/2005	Robert Johan Joseph Hageman	0012/73640/NHZ	7309
23432 7590 04/30/2010 COOPER & DUNHAM, LLP 30 Rockefeller Plaza 20th Floor NEW YORK, NY 10112				
EXAMINER				
GUDIBANDE, SATYANARAYAN R				
ART UNIT		PAPER NUMBER		
1654				
MAIL DATE		DELIVERY MODE		
04/30/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,623

Applicant(s)

HAGEMAN ET AL.

Examiner

SATYANARAYANA R.
GUDIBANDE

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) 26-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 18-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of group I invention (claims 1, 18-25) and election of caseinates from milk as the preferred species of protein (claim 1); guanidine acetic acid as the preferred species of glycoacyamine (claim 1); folic acid as the preferred species of vitamin (claim 21); maltodextrin as the preferred species of food grade carbohydrate (claim 22); magnesium as the preferred species of mineral (claim 24); powder as the preferred form of composition (claim 25); and neurological disorders as the preferred form of disorder (claim 33) in the reply filed on 12/27/07 is acknowledged. The traversal arguments were answered in the office action dated 3/4/08.

Status of Pending Claims

Applicant's amendment to claims in the response filed on 2/12/10 has been acknowledged.

Claims 1 and 18-33 are pending.

Claims 2-17 have been canceled.

Claims 26-33 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/27/07.

Claims 1, 18-25 are examined on the merit.

Any objections and/or rejections made in the office action dated 8/4/09 and not specifically discussed in its original or modified form here are considered withdrawn.

Maintained Objections/Rejections

Information Disclosure Statement(IDS)

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Applicants have filed an IDS on 10/17/05 that has been considered. However, the instant specification cites many patent and non-patent literature references throughout the disclosure (pages 3, 4, 7, 8, 11 and 16) that have not been submitted on an IDS.

New grounds of rejection

Claim Objections

Claim1 is objected to because of the following informalities: The spelling for the 'guanidine acetic acid' is incorrect on line 7. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCoy, 1956, American journal of Veterinary Research, 17, 90-97 in view of Hageman (WO 99/03365) further in view of Swaisgood, 1993, J. Dairy Sci., 76, 3054-3061.

In the instant application, applicants claims a nutritional or pharmaceutical composition comprising: "a) a protein fraction containing peptides and proteins containing L-Serine and b) glycocyamine (GA), equivalents thereof, and mixtures thereof, wherein the composition is free of glycine, or glycine is present in the composition, the weight ratio L-Serine to Glycine is more than 2.7:1 as determined by hydrolysis".

McCoy discloses a nutritional composition of low casein, supplemented with methionine and glycocyamine (page 91, column 1, bridging paragraph from page 90) for administering to

dogs undergoing chemotherapy. The disclosure of McCoy that casein combined with glycocyamine was administered to dogs reads on the instant claim 1. The composition comprises of casein protein and glycocyamine. Glycine in free form is absent in the composition, however, it reads on the limitations of instant claim 18 as the amount of glycocyamine is 0.67% compared to 0.2% nitrogen from low casein component.

Although, McCoy discloses a composition of casein and glycocyamine, it does not disclose that the casein protein used in the composition has a L-serine to glycine ratio more than 2.7:1 as required by the instant claims and other ingredients such as vitamins (folic acid), carbohydrate (maltodextrin), mineral (magnesium), etc. Items in the parenthesis is the elected species in the instant invention.

Swaigood, discloses that casein (milk protein, source: cow) is a mixture of proteins comprising α_1 -CN, α_2 -CN, κ -Cn and β -CN (table 1, page 3056). The molar ratio of L-serine:glycine (shown in the parenthesis in **bold**) differs in each of these proteins as follows: α_1 -CN (**8:9**), α_2 -CN (**6:2**), κ -Cn (**12:2**) and β -CN (**11:5**). The two casein proteins α_2 -CN (**6:2**), κ -Cn (**12:2**) have the L-serine:glycine ratio of more than 2.7:1. The milk proteins also comprises of 'phosphorylated serine' in the composition that would enhances the ratio of serine:glycine upon hydrolysis.

Hageman discloses a nutritional composition comprising casein as the protein (example 4, page 13) (reads on instant claims 1 and 18). Maltodextrin and sucrose as sugar (example 4, page 13) (reads on instant claim 22). Folic acid as the vitamin (example 4, page 13) (reads on instant claim 21). Magnesium as the mineral (example 4, page 13) (reads on instant claim 24). 0.5 to 40 g of Creatine (claim 4, page 16) (reads on instant claim 19 and 20). This reads on the

recited ratio for energy metabolism precursor to creatine of 0.2:5. Pyridoxal as the aldehyde (claim 1, page 16) (reads on instant claim 23). Hageman also discloses that the mixture is homogenized, pumped into a heat exchanger where the water is evaporated and resulting product spray-dried and packed into cans (page 12, lines 24 and 25). This reads on the instant claim 25 wherein the composition is in the powder form. It should be noted that the composition disclosed by Hageman is also free of free glycine.

It would have been obvious to one of ordinary skill in the art combine the teachings of McCoy, Swaisgood and Hageman to arrive at the instant nutritional composition comprising protein containing L-serine and glycine, glycocyclamine, carbohydrate, aldehyde, mineral, creatine and vitamins. McCoy discloses a nutritional composition comprising casein, glycocyclamine and Swaisgood discloses that casein protein fractions comprises of fragments that exhibits the ratio of serine:glycine more than 2.7. Hageman discloses a nutritional composition comprising casein, maltodextrin, folic acid, pyridoxal, creatine and magnesium. One of ordinary skill in the art would have been motivated to combine the teachings of McCoy, Swaisgood and Hageman because, McCoy discloses that to combat toxicity of cancer drugs during cancer treatment the body depletes "labile protein stores" as studied in the dogs by McCoy. McCoy discloses that a nutritional formulation comprising low casein supplemented with methionine and glycocyclamine reduced the excretion of urea nitrogen thereby increasing the retention of body nitrogen (page 93, column 1, bridging paragraph from page 92). Hence incorporation of glycocyclamine with casein is important in supplementing and retaining proteins in chemotherapy patients to overcome the toxic effects of the chemotherapy treatment which depletes proteins from the body. It should also be noted that applicants in their response (filed 2/12/10) to rebut the rejection

under 35 USC 112 (written description) on pages 18-19 acknowledge that, “[A]dditionally, applicants note that the information available from Swaisgood provides examples of protein sources wherein the ratio of L-Serine:Glycine is more than 2.7:1. Applicants maintain that such information would provide sufficient guidance to one of skill in the art to allow them to select an appropriate source protein such that the ratio of L-Serine:Glycine is more than 2.7:1”. Therefore, one of ordinary skill in the art would incorporate glycocyamine into nutritional compositions comprising casein proteins and beneficial ingredients of Hageman to arrive at the instant invention.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976). In light of the foregoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a). From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined

Art Unit: 1654

application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Commonly owned and different inventive entities

Claims 1, 19, 21-24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,544,547 ('547 patent) in view of McCoy, 1956, American journal of Veterinary Research, 17, 90-97 and further in view of Swaisgood, 1993, J. Dairy Sci., 76, 3054-3061.

In the instant application, applicants claims a nutritional or pharmaceutical composition comprising: "a) a protein fraction containing peptides and proteins containing L-Serine and b) glycocyamine (GA), equivalents thereof, and mixtures thereof, wherein the composition is free of glycine, or glycine is present in the composition, the weight ratio L-Serine to Glycine is more than 2.7:1 as determined by hydrolysis".

'547 Patent discloses a food composition comprising of proteinaceous material (reads on instant claim 1), carbohydrates (reads on instant claim 22), folic acid (reads on instant claim 21), magnesium (reads on instant claim 24), creatine (reads on instant claim 19) and pyridoxal (reads

on instant claim 23). '547 Patent does not disclose that free glycine was present in the composition.

'547 Patent does not disclose glycoxyamine in the food composition or discloses that the protein present in the composition has a ratio of greater than 2.7:1 for serine:glycine.

McCoy discloses a nutritional composition comprising casein and glycoxyamine and Swaisgood, discloses that casein (milk protein, source: cow) is a mixture of proteins comprising α_1 -CN, α_2 -CN, κ -Cn and β -CN (table 1, page 3056). The molar ratio of L-serine:glycine (shown in the parenthesis in **bold**) differs in each of these proteins as follows: α_1 -CN (**8:9**), α_2 -CN (**6:2**), κ -Cn (**12:2**) and β -CN (**11:5**). The two casein proteins α_2 -CN (**6:2**), κ -Cn (**12:2**) have the L-serine:glycine ratio of more than 2.7:1. The milk proteins also comprises of 'phosphorylated serine' in the composition that would enhances the ratio of serine:glycine upon hydrolysis.

It would have been obvious to one of ordinary skill in the art combine the teachings of Swaisgood and McCoy and '547 Patent to arrive at the instant nutritional composition comprising protein containing L-serine, glycoxyamine, carbohydrate, aldehyde, mineral, creatine and vitamins that is free of free glycine. McCoy discloses a nutritional composition comprising casein, glycoxyamine, Swaisgood, discloses that casein (milk protein, source: cow) is a mixture of proteins comprising α_1 -CN, α_2 -CN, κ -Cn and β -CN (table 1, page 3056) and '547 Patent discloses a nutritional composition comprising casein, maltodextrin, folic acid, pyridoxal, creatine and magnesium. One of ordinary skill in the art would have been motivated to combine the teachings of McCoy, Swaisgood and '547 Patent because, McCoy discloses that to combat toxicity of cancer drugs during cancer treatment the body depletes "labile protein stores" as

studied in the dogs by McCoy. McCoy discloses that a nutritional formulation comprising low casein supplemented with methionine and glycocyamine reduced the excretion of urea nitrogen thereby increasing the retention of body nitrogen (page 93, column 1, bridging paragraph from page 92). Hence incorporation of glycocyamine with casein is important in supplementing and retaining proteins in chemotherapy patients to overcome the toxic effects of the chemotherapy treatment which depletes proteins from the body. It should also be noted that applicants in their response (filed 2/12/10) to rebut the rejection under 35 USC 112 (written description) on pages 18-19 acknowledge that, “[A]dditionally, applicants note that the information available from Swaisgood provides examples of protein sources wherein the ratio of L-Serine:Glycine is more than 2.7:1. Applicants maintain that such information would provide sufficient guidance to one of skill in the art to allow them to select an appropriate source protein such that the ratio of L-Serine:Glycine is more than 2.7:1”. Therefore, one of ordinary skill in the art would incorporate glycocyamine into nutritional compositions comprising proteins of Swaisgood and beneficial ingredients of ‘547 Patent to arrive at the instant invention. A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976). In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a). From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at

the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Satyanarayana R. Gudibande whose telephone number is 571-272-8146. The examiner can normally be reached on M-F 8-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SATYANARAYANA R. GUDIBANDE/
Examiner, Art Unit 1654

/Andrew D Kosar/
Primary Examiner, Art Unit 1654